JANAKIRAM CHETTY v. NAGAMONY MUDALIAR.

KRISHNAN, J.

incident of a joint Hindu family but it is not in my opinion a pre-requisite for its constitution. In the passage in Sir BHASHYAM AYYANGAR'S judgment in *Sudarsanam Maistri* v. *Narasimhulu Maistri*(1) quoted by the learned trial Judge, he was discussing the Mitakshara doctrine of joint family property and not the requisites of a joint family. I have no doubt that Kathirvelu and his sons constituted a joint Hindu family when the will took the effect. But it cannot be said that there is anything in the will to show definitely and clearly that the bequest was to the family and not to the individual members thereof separately. The ordinary presumption that when there are several joint donees they take as tenants-in-common must therefore prevail. I agree with my learned brother that these appeals fail and must be dismissed with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Kumaraswami Sastri.

1925, March 18.

AYISWARYANANDAJI SAHEB AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

SIVAJI RAJA SAHEB AND OTHERS (DEFENDANTS), RESPONDENTS.*

Hindu Law—Religious endowments—Trusteeship—Hereditary trusteeship, whether partible or impartible—Tanjore Palace devastanams—Succession to trusteeship—Trusteeship, whether devolves on a single heir or on coheirs—Seizure by

(1) (1902) I L.R., 25 Mad., 149.

* Appeal No. 64 of 1920.

AYISWARYA-NANDAJI SAHEB v. SIVAJI RAJA SAHEB.

Government—Regrant to Senior Rani, effect of—Usage—Right of illegitimate sons of late Raja to trusteeship of Palace devastanams—Acquisitions by Ranis—Accretion—Presumption as to accretion—Corpus in possession of Receiver and not with the widows—Effect on presumption as to accretion—Illegitimate sons of Raja, whether heirs to stridhanam properties of Ranis—Collateral succession of illegitimate sons.

After the death of Sivaji, the last Raja of Tanjore, in 1855, the Government took possession, not only of the Raj and the private property of the Raja, but also of the devastanams and their endowments which were in the possession and management of the late Raja. The Senior Rani, after obtaining possession of the private properties on a petition to the Government in 1862, sent up a memorial to the Government praying that the devastanams and their endowments might be restored to her possession and management as the head of the family of the Raja for the time being. The Government restored them to her by an order in 1863, but did not indicate therein the course of succession to the management subsequent to her death. On her death in 1892, the Government again took possession of the devastanams and their endowments, but had to restore them to the next senior Rani under a decree in a suit filed by her for the purpose; thereafter each of the surviving Ranis was in management as sole trustee until the last of them died in 1912. After her death, the illegitimate sons of the late Raja sued the sons of the adopted son of the Raja for joint management as trustees of the devastanams and endowments along with the latter, and for recovery of their shares in certain properties left by the Ranis, claiming them either as accretions to the Raja's estate or as stridhanam properties of the Ranis. It appeared that the Rajas had founded the devastanams and endowed them, that each Raja was the sole trustee on his accession to the Raj, that a Receiver was in possession of the Raja's private properties after their restoration to the Ranis during their lifetime, and that the devastanams and endowments were not in the possession and management of the Receiver but with the Ranis:

Held, that the devolution of the trusteeship of a religious endowment depends upon the terms of the trust deed, if any, by which it was founded, or on the usage of each particular institution where no express trust deed exists;

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that in this case according to the usage existing prior to the death of the late Raja, the trusteeship of the devastanams was held by the Raja for the time being as sole trustee, i.e., as impartible property held by a single individual;

that the character of the trusteeship and the rule of devolution were not altered by the grant of the Government in 1863 to the Senior Rani, who claimed it as head of the family of the Raja for the time being, held it as sole trustee, and was followed by the surviving Ranis, each of whom held it as a sole trustee; *Muttu Vaduganadha Tevar* v. *Dora Singha Tevar*, (1881) I.L.R., 3 Mad., 290 (P.C.), followed;

and that, consequently, the trusteeship in this case was impartible property devolving on a single heir as sole trustee, and therefore devolved on the eldest son of the adopted son of the late Raja as sole trustee;

Question, whether the office of dharmakartha or trustee of a religious or charitable endowment descends to a single heir or is to be treated as joint property on partition, discussed. *Ramanathan Chetti* v. *Murugappa Chetty*, (1906) I.L.R., 29 Mad., 283 (P.C.); and *Meenakshi Achi* v. *Somasundaram Pillai*, (1921) I.L.R., 44 Mad., 205, distinguished. *Sethuramaswamiar* v. *Meruswamiar*, (1918) I.L.R., 41 Mad., 296 (P.C.), referred to

Held also, that the properties acquired by the Ranis did not form accretions to the Raja's estate, as the Ranis were not in possession of the corpus of the estate, and consequently there was no room to presume the widows' intention to make them accretions to their husband's estate; *Saodamini Dasi* v. *The Administrator-General of Bengal* (1893), I.L.R., 20 Calc., 433 (P.C.), *and Rajah Parthasarathy Appa Rao* v. *Rajah Venkatadri Appa Rao*, (1923) I.L.R., 46 Mad., 190, followed;

that, viewing the acquisitions as stridhanam, the illegitimate sons of the Raja, though they might be his sapindas, were not entitled to succeed as heirs to the collaterals of the Raja, and consequently they were not entitled to succeed to the stridhanam properties of the Ranis.

Subramania Ayyar v. *Rathnavelu Chetty*, (1918) I.L.R., 41 Mad., 44 (F.B.), followed.

APPEAL against the decree of S. RANGANATHA MUDALIYAR, the Subordinate Judge of Tanjore, in Original Suit No. 43 of 1913.

The plaintiffs are some of the illegitimate sons of the last Raja of Tanjore. The suit relates to the trusteeship of the Fort or Palace devastanams and their endowments and also to the plaintiffs' right to a share in the acquisitions made by the late Ranis as well as to certain jewels and movables belonging to the late Ranis. After the death in 1855 of Sivaji, the last Raja of Tanjore, the Government took possession of three sets of properties, (1) the Raj, (2) the private property of the Raja, (3) the pagodas, devastanams and their endowments as well as chatrams and their endowments. On 21st August 1862, on a petition filed by the then Senior Rani, Kamatchi Bayi Sahiba, the Government restored the private properties to her as Senior Rani and enjoined on her that she should arrange for the participative enjoyment in the estate of her co-widows or co-heirs, and also provided

"that on the death of the last surviving widow, the daughter of the late Raja or failing her, the next heirs of the late Raja will inherit the property."

In December 1862, Rani Kamatchi Bayi Saheba sent a memorial to the Government praying that

"the devastanams and their endowments which have been founded from time to time by members of her family may now be made over to her as the head of the family for the time being."

The Government passed an order on 19th March 1863, in these words:—

"It is desirable that the connection of the Government with the pagodas should cease, and they will accordingly be made over to Her Highness Kamatchi Bayi Saheba."

The Rani was in sole management of the devastanams and their endowments till her death in 1892. On her death the Government again took possession of the devastanams and their endowments. A suit was instituted by the next senior Rani against the Government and

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the Temple Committees, to recover the properties. The plaintiff succeeded in the first Court, and the decree was affirmed by the High Court on appeal by the judgment in *Kalianasundaram Ayyar* v. *Umamba Bayi Saheba*(1). The surviving Ranis were successively sole trustees of these institutions until the last of them died in 1912. With regard to the private properties of the late Raja, which were restored by the Government to the Senior Rani under an order of 1862, August 21, there were disputes as to the enjoyment by the co-widows and a suit was instituted by a junior Rani against the senior and others, and a Receiver was appointed by the decree in the suit in respect of the private properties and the Receiver was in possession of the same during the lives of all the Ranis. The Ranis were in receipt of pensions to the extent of Rs. 9,600 per annum. The Ranis had purchased certain lands out of their income and had also jewels and movables of large value. The illegitimate sons of the late Raja, known as Mangalavilas people, claimed in this suit to be entitled to be joint trustees of the devastanams and endowments along with the two sons of the adopted son of the late Raja, viz., defendants 1 and 2, and also claimed a share in the acquisitions made by the Ranis as well as in the jewels and movables purchased and left by them. The first and second defendants denied the plaintiffs' right to joint trusteeship with them, as well as to a share in the acquisitions and other properties. The first defendant claimed that he was the sole trustee of the devastanams. The Subordinate Judge held that the plaintiffs were not entitled to be joint trustees, that the first defendant was in law the sole trustee, that the plaintiffs were not entitled to a share in the properties forming the

(1) (1897) I.L.R., 20 Mad., 421.

acquisitions of the Ranis or their jewels, and dismissed the suit. The plaintiffs preferred this appeal.

A. Krishnaswami Ayyar for appellants.—The plaintiffs and some of the defendants (namely, defendants 3 and 4) are Mangalavilas people who have been held to be the illegitimate sons of Sivaji, the late Raja of Tanjore, and they have been held to be entitled to their shares in the private properties of the late Raja in a recent litigation—*Maharaja of Kolhapur* v. *Sundaram Ayyar*(1). The present suit is instituted by the illegitimate sons to establish their right to joint trusteeship of certain devastanams and their endowments along with the first and second defendants who were held to be the sons of an adopted son of the late Raja. Two questions arise, viz., (1) whether the illegitimacy is a bar to trusteeship, (2) what is the quantum of their interest in the trusteeship and how it is to be exercised. The lower Court held that illegitimate sons are postponed to legitimate sons and that it was by primogeniture that succession to trusteeship devolved and that the elder son of the adopted son was entitled to be sole trustee. The devastanams, etc., were taken over by the Government in 1855 on the Raja's death, but restored in 1863 to the Senior Rani, as the then senior among the seven Ranis of the late Raja. In a previous litigation between the senior widow against the Secretary of State and others, it was held that the senior widow to whom the devastanams and endowments were restored took a widow's estate ; see judgment of the High Court in *Kalianasundaram Ayyar* v. *Umamba Bayi Saheba*(2). So long as a Hindu family is joint, only the senior member is entitled to manage. Both trusteeship and secular property of the Raja follow

(1) (1925) I.L.R., 48 Mad., 1. (2) (1897) I.L.R., 20 Mad., 421.

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the same line of inheritance. Both the trusteeship and secular property of the Raja were granted in the same way to the widows in the name of the then senior widow.

KUMARASWAMI SASTRI, J.—For 200 years, the Raja alone was trustee and not the junior members of the family—how can the restitution in 1863 make the trusteeship partible, if it was originally impartible and devolved by primogeniture?

In the Nuzvid case, *Raja Venkata Rao* v. *Court of Wards*(1) property was held to be divisible after re-grant. The ordinary rule of Hindu Law is, as to trusteeship, that there ought to be enjoyment by co-sharers by turns. See per BHASHYAM AYYANGAR, J., in *Ramanathan Chetty* v. *Murugappa Chetty*(2). This view is approved by the Privy Council on appeal in *Ramanathan Chetti* v. *Murugappa Chetti*(3); see also *Sethuramaswamiar* v. *Meruswamiar*(4), *Sethuramaswamiar* v. *Meruswamiar* (5) and *Meenakshi Achi* v. *Somasundaram Pillai*(6).

Primogeniture and exclusion of females should be proved as a custom, the ordinary rule of Hindu Law being that trusteeship is partible property. The very first trustee recognized by the Government by the re-grant in 1863 was a woman who was the senior widow of the family. When the family is joint, only the senior male member of the family is entitled to manage. See *Thandavaroya Pillai* v. *Shunmugam Pillai*(7).

After the last widow's death, the management vested in all the co-heirs to the estate. There is coparcenery between co-widows. See the judgment in A.S. 101 and 299 of 1919 of WALLIS, C.J., and SADASIVA AYYAR, J.; and *Jijoyiamba Bayi Saiba* v. *Kamakshi Bayi Saiba*(8).

(1) (1879) I.L.R., 2 Mad., 128 (P.C.).
(2) (1904) I.L.R., 27 Mad., 192.
(3) (1906) I.L.R., 29 Mad., 283 (P.C.).
(4) (1911) I.L.R., 34 Mad., 470.
(5) (1918) I.L.R., 41 Mad., 296 (P.C.).
(6) (1921) I.L.R., 44 Mad., 205.
(7) (1909) I.L.R., 32 Mad., 167.
(8) (1868) 3 M.H.C.R., 424.

The case in *Kaliana Sundaram Ayyar* v. *Umamba Boyi Saheba* (1) is direct authority that the grant in 1863 was a grant to a joint family.

The next question is as to the illegtimate son's right to the acquisitions made by the late Ranis. The Receiver was in management of the Raja's private properties on behalf of the widows. The position is the same as if a widow was in possession of the estate on behalf of all of them. The presumption is that the acquisitions take the character of the parent estate, and the line of succession is the same as in the case of the parent estate. See the observations of the Privy Council in *Nabakishore Mandal* v. *Upendrakishore Mandal*(2). The onus is on the party who alleges the acquisitions to be stridhanam of the widow to prove it. See also *Mussumat Bhagbutti Daee* v. *Chowdry Bholanath Thakoor* (3); *Gonda Kooer* v. *Kooer Oody Singh*(4) ; *Isri Dutt Koer* v. *Hansbutti Koerain*(5) and *Sheolochun Singh* v. *Sahib Singh*(6).

The case *Saodamini Dasi* v. *The Administrator-General of Bengal* (7) is clearly distinguishable; the estate there vested in an executor who was to pay some income to the widow until she adopted ; hence no income of the husband's estate vested in the widow, or was used by the widow in making the acquisitions ; in the present appeal, the Receiver held for the rightful owners and no property vested in the Receiver unlike the case of an executor. The observation in *Akkanna* v. *Venkayya*(8) is opposed to the observations of the Privy Council in *Nabakishore Mandal* v. *Upendrakishore Mandal*(2). The question of presumption, left open by Privy Council

(1) (1897) I.L.R., 20 Mad., 421.
(2) (1922) 42 M.L.J., 253 (P.C.).
(3) (1875) 2 I.A., 256.
(4) (1874) 14 Beng. L.R. 159 (P.C.).
(5) (1884) I.L.R., 10 Calc., 324 (P.C.).
(6) (1887) I.L.R., 14 Calc., 387 (P.C.).
(7) (1893) I.L.R., 20 Calc., 433 (P.C.).
(8) (1902) I.L.R., 25 Mad., 351.

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in *Rajah of Ramnad* v. *Sundara Pandiyasami Tevar*(1) is finally decided in *Nabakishore Mandal* v. *Upendrakishore Mandal*(2).

The next point is, even assuming that the acquisitions were the stridhanam properties of the Ranis, the illegitimate sons are heirs, because they are the husband's heirs under the special text of Brihaspathi. The adopted son was adopted by Kamakshi Boyi Saheba only and not in association with the other Ranis. The other Ranis who subsequently inherited the property were only step-mothers of the adopted son. See Uttumalai case—*Annapurni Nachiar* v. *Forbes*(3). The latter could inherit only as a sapinda of their husband. All the sons, including the adopted son's son, take as husband's heirs. No son can be excluded. See *Bai Kesserbai* v. *Hunsraj Morarji*(4).

In *Nanja Pillai* v. *Sivabagyathachi*(5) a co-wife's daughter succeeded to the step-mother. If a woman has no issue, you must trace the inheritance as if the property was the husband's property. See also *Kanakammal* v. *Ananthamathi Ammal*(6).

KUMARASWAMI SASTRI, J.—In the case of collateral succession, illegitimate sons have no right?

The inheritance to stridhanam is under a special text of Brihaspathi. In *Subramania Ayyar* v. *Rathnavelu Chetty*(7) it has been held that a putative father succeeds to his illegitimate son. An illegitimate son is a sapinda of the putative father. If the property is stridhanam of the Ranis, the plaintiffs and other illegitimate sons inherit jointly with the adopted son's sons.

(1) (1919) I.L.R., 42 Mad., 581 (P.C.).
(2) (1922) 42 M.L.J., 253 (P.C.).
(3) (1900) I.L.R., 23 Mad., 1 (P.C.).
(4) (1906) I.L.R., 30 Bom., 431 (P.C.).
(5) (1913) I.L.R., 36 Mad., 116.
(6) (1914) I.L.R., 37 Mad., 293.
(7) (1918) I.L.R., 41 Mad., 44 (F.B.)

A. V. Viswanatha Sastri for first respondent.—There were three sets of properties confiscated by the Government in 1855. There has been a distinction in the mode in which they were regranted or otherwise disposed of. The three kinds of properties are (i) raj, (ii) private properties, (iii) devastanams, chatrams and other charitable endowments. See *The Secretary of State in Council of India v. Kamachee Boye Saheba*(1) With regard to the re-grant of devastanams and their endowments, the terms of the re-grant are in sharp contrast to those of the re-grant of the private properties under Exhibit A-46 (in 1862, August 21). In the grant of devastanams, there are no words showing a widow's estate as granted, or mention of daughter or next heirs of Raja, or words importing the participation of the other co-widows in the trusteeship. The grant to Kamakshi Boyi Saheba is a grant in fee simple as absolute trustee. The Rajas were sole trustees all along. The Senior Rani was sole trustee from 1863 to 1892, and so also were the succeeding Ranis. In *Baboo Beer Pertab Sahee v. Maharajah Rajendra Partab Sahee*(2) it was held that a re-grant to a junior member after confiscation for rebellion, though a new grant, continues the old impartible nature of the tenure. By the grant in 1863, the old rule of primogeniture as to trusteeship was not taken away. The case *Muttu Vaduganadha Tevar* v. *Dora Singha Tevar*(3) distinguishes the case in *Raja Venkata Row* v. *Court of Wards*(4). See also *Ram Nundun Singh* v. *Janki Koer*(5). Under the Hindu Law, the eldest heir of a trustee succeeds to him. See *Purappavanalingam Chetti* v. *Nullasivan Chetti*(6), *Trimbak* v. *Lakshman* (7), *Sethuramaswamiar* v. *Meruswamiar*(8), *Sri Raman*

(1) (1859) 7 M.I.A., 476.
(2) (1867) 12 M.I.A., 1.
(3) (1881) I.L.R., 3 Mad., 290 (P.C.).
(4) (1879) I.L.R., 2 Mad., 128 (P.C.).
(5) (1902) I.L.R., 29 Calc., 828 (P.C.).
(6) (1863) 1 M. H.C.R., 415.
(7) (1896) I.L.R., 20 Bom., 495.
(8) (1918) I.L.R., 41 Mad., 296 (P.C.).

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Lalji Maharaj v. *Sri Gopal Lalji Maharaj*(1) and Mayne's Hindu Law, paragraph 430. The decision in *Meenakshi Achi* v. *Somasundaram Pillai*(2) is distinguishable, as that was a grant in favour of two members of the family.

As to the claim for the acquisitions made by the Ranis, there are three points to be remembered in this connexion, (1) the Receiver was in possession of the corpus from 1866, and none of the widows was in possession; (2) each Rani had a pension of Rs. 9,600 per annum, and Kamakshi Boyi Saheba had Rs. 1,000 more; and (3) this is a Government grant. The widows had under the grant only a life estate, and there can be no accretion in the case of life estates. It is a question of intention of the widow whether there was accretion to the corpus or not. The onus is on the person who alleges that there was accretion to prove it; the decision in *Akkanna* v. *Venkayya*(3) is approved by the Privy Council in *Rajah of Ramnad* v. *Sundara Pandiyasami Tevar*(4) and in *Rani Jagadamba Kumari* v. *Wazir Narain Singh*(5).

Illegitimate sons cannot succeed to collaterals See *Karuppa Goundan* v. *Kumarasami Goundan*(6), *Ramalinga Muppan* v. *Pavadai Goundan*(7). Illegitimate daughter does not inherit to her mother's stridhanam, *Meenakshi* v. *Muniandi Panikkan*(8), *Subramania Ayyar* v. *Rathnavelu Chetty*(9), *Dharma Lakshman* v. *Sakharam Ramjirao*(10), *Zipru* v. *Bontya*(11). *Bai Kesserbai* v. *Hansraj Morarji*(12) approves of *Gojabai* v. *Shrimant Shahajirao Maloji Raji Bhosle*(13). Illegitimate sons of a man cannot claim as sapindas of his widow.

(1) (1897) I.L.R., 19 All., 428.
(2) (1921) I.L.R., 44 Mad., 205.
(3) (1902) I.L.R., 25 Mad., 351.
(4) (1919) I.L.R., 42 Mad., 581 (P.C.).
(5) (1923) I.L.R., 2 Pat., 319 (P.C.).
(6) (1902) I.L.R., 25 Mad., 429.
(7) (1902) I.L.R., 25 Mad., 519.
(8) (1915) I.L.R., 38 Mad., 1144.
(9) (1918) I.L.R., 41 Mad., 44 (F.B.).
(10) (1920) I.L.R., 44 Bom., 185.
(11) (1922) I.L.R., 46 Bom., 424.
(12) (1906) I.L.R., 30 Bom., 431 (P.C.).
(13) (1893) I.L.R., 17 Bom., 114.

C. S. Venkata Achariyar for the second respondent (adopted son's second son).—Illegitimate sons are outside the pale of Hindu Law except where texts expressly give rights to them. In *Ramasami Kamaya Naik* v. *Sundaralingasami Kamaya Naik*(1) (Saptur Zamindari case), a senior son by a wife of an inferior caste was held to have no right as against a younger son of a wife of a superior caste. *A fortiori* an illegitimate son (who is son of no-wife) should be postponed to a legitimate son. The grant of 1863 gives an absolute right to Kamakshi Boyi Saheba. It is her stridhanam. The construction put on the grant in *Kalianasundaram Ayyar* v. *Umamba Bayi Saheba*(2) is erroneous. It is not *res judicata* in this suit. The second defendant is entitled to be a joint trustee with the first defendant.

A. Krishnaswami Ayyar for appellants in reply.—Management by turns is division of trusteeship. Unless special usage is alleged and proved, ordinary rule of partibility applies.

The root of the title of Kamakshi Boyi Saheba is the grant of 1863. When the grantee put forward a certain title in a certain character and the grant is made to her as such, the grant should be so construed. See *Vengamma* v. *Chelamayya*(3).

There being no proof of special usuage as regards this institution after 1863, the ordinary rule of partibility of trusteeship should be followed. In the case of stridhanam, in default of issue of the woman, the cases lay down that succession is traced as if the property belonged to the husband. In *Bai Kesserbai* v. *Hunsraj Morarji*(4) the Privy Council held that one co-widow succeeds to another co-widow. In *Tukaram* v.

(1) (1894) I.L.R., 17 Mad., 422. (2) (1897) I.L.R., 20 Mad., 421.
(3) (1913) I.L.R., 36 Mad., 484. (4) 1906) I.L.R., 30 Bom., 431 (P.C.).

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Narayana Ramchandra(1) it was held that propinquity is identical for woman's sapindas and for her husband's sapindas. In *Nanja Pillai* v. *Sivabagyathachi*(2) it was held the stridhanam heir is (her husband's) nearest sapinda. In *Subramania Ayyar* v. *Rathnavelu Chetty* (3), SADASIVA AYYAR, J., says that an illegitimate son is a sapinda of his father. See also *Kanakammal* v. *Ananthamathi Ammal*(4) and *Jogendro Bhupati Hurrochundra Mahapatra* v. *Nityanand Man Sing*(5).

JUDGMENT.

SPENCER, J.

SPENCER, J.—Sivaji, the last Raja of Tanjore, died in 1855. After his death the East India Company took possession not only of the Raj of Tanjore and the private properties of the late Raja, but also certain pagodas and devastanams which had been in his possession and management up to the date of his death. It was held by the Privy Council that the East India Company's usurpation of this property amounted to an act of State of which the ordinary Civil Courts could not take cognizance. Subsequently the Senior Rani Kamakshi Bai Saheba petitioned Government for a restoration of the estate and also of the devastanams. The estate was restored by proceedings of the Madras Government, dated 21st August 1862, which we have dealt with in another place. The order restoring the devastanams was dated the 19th March 1863.

In her memorial, dated the 24th December 1862, Kamakshi Bai Saheba prayed that the pagodas and charitable institutions which had been founded from time to time by members of her family might be made over to her as the head of the family for the time being.

(1) (1912) I.L.R., 36 Bom., 339 (F.B.). (2) (1913) I.L.R., 36 Mad., 116.
(3) (1918) I.L.R., 41 Mad., 44 (F.B.). (4) (1914) I.L.R., 37 Mad., 293.
(5) (1891) I.L.R., 18 Calc., 151 (P.C.).

She mentioned in her memorial that Mr. Phillips, the Commissioner of Tanjore, had in 1858 recommended the Government to make over these endowments to Sakharam Saheb, husband of the Princess, and that the Government refused to accept that recommendation. The Government Agent, in forwarding Kamakshi Bai's memorial, recommended her prayer to be granted on the ground that it was highly desirable that all connection with these religious institutions on the part of Government should cease. The Governor in Council concurred with the Agent's recommendation and ordered the pagodas to be made over to the Rani. In doing so, the Government did not indicate the course of succession to be followed in the management of these endowments after Kamakshi Bai's death. Accordingly she managed the institutions till 1892, when she died.

Upon her death Government again took possession of the devastanams and put them under the management of the Temple Committee of Tanjore. The next Senior Rani Umamba Bai brought a suit (Original Suit No. 3 of 1894) for the recovery of these devastanams and their endowments, basing her title on the fact that she was the Senior Rani and head of the family. She impleaded the Secretary of State for India, the members of the Tanjore and Kumbakonam Devastanam Committees and the other Ranis as defendants in her suit. In a careful judgment, in which he set out the history of these institutions, Mr. Venkobachariyar, then Subordinate Judge of Tanjore, came to the conclusion that the Government had no right to resume, or in any way interfere with, the management of the temples after granting them in favour of Kamakshi Bai, that they devolved as impartible property and that, by the State grant restoring them, Kamakshi Bai acquired an heritable interest in the properties. He decreed the suit in

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plaintiff's favour. There was an appeal to the High Court, which was heard by SHEPHARD and DAVIES, JJ. Those learned Judges dismissed the appeal holding that the estate taken by the Senior Rani was in the nature of self-acquired property in her hands in the sense that her rights were derivative from Government and had no relation to inheritance on the death of the Raja. They inferred from the fact that the plaintiff was chosen as the person to whom the trust should be made over in her capacity of widow of the late Raja, that the intention of the Government was to grant her a widow's estate, that is, to put her in the position which she would have enjoyed had there been no confiscation on the death of her husband the Raja.

After the death of Umamba Bai, the devastanam estate was managed by each of the widows who in turn became senior widow, until the last widow Jijamba Bai died in 1912. Disputes then arose between the children of the Raja's sword wives, who are known as Mangala Vilas people, and the sons of the adopted son, who are defendants 1 and 2. The former brought Original Suit No. 43 of 1913 in which they claimed the right to be declared entitled to the possession and management of the devastanams and their endowments and also to share in the immovable and movable properties purchased by the widows of the late Raja, which became accumulations and accretions to the private estate of the Raja, to which they claimed to succeed either as his heirs or as heirs to the widows who acquired these properties as *stridhanam*.

The learned Subordinate Judge, in dealing with these and other properties in dispute, held that the acquisitions of the various Ranis having been purchased in their own names, became their separate estates; and as regards the devastanam properties, he held that the

Government grant was to Kamakshi Bai by name as a single individual or sole trustee and that the endowments were therefore not capable of being made the subject of partition, but would pass to the head of the family for the time being, that individual at the time of suit being the 1st defendant, and he accordingly dismissed the suit.

In appeal, Mr. Alladi Krishnaswami Ayyar argued that the trusteeship of the devastanams should follow the same line of inheritance as the private estate of the Raja and that the Mangala Vilas people, having been held entitled to share in the private estate, should also be given a share in the management of the temples, the Government having by their grant destroyed the incident of impartibility which once attached to the estate. In support of his arguments he relied on *Raja Venkata Rao* v. *Court of Wards*(1), *Ramanathan Chetty* v. *Murugappa Chetty*(2), the principles upon which this case was decided having been approved by the Privy Council in *Ramanathan Chetti* v. *Murugappa Chetti*(3), on *Sethuramaswamiar* v. *Meruswamiar*(4), from which there was an appeal to the Privy Council in *Sethuramaswamiar* v. *Meruswamiar*(5), which reversed the decision of this Court, on *Meenakshi Achi* v. *Somasundaram Pillai*(6), and *Thandavaroya Pillai* v. *Shunmugam Pillai*(7).

For the respondent our attention was called to the fact that in the written statement of the third defendant, who was one of the Mangala Vilas people, it was asserted that these properties were impartible and should descend to the senior member of the senior line according to the custom obtaining in the family of the late Raja. In the Saptur case, *Ramasami Kamaya Naik* v.

(1) (1879) I.L.R., 2 Mad., 128 (P.C.).
(2) (1904) I.L.R., 27 Mad., 192.
(3) (1906) I.L.R., 29 Mad., 283 (P.C.).
(4) (1911) I.L.R., 34 Mad., 470.
(5) (1918) I.L.R., 41 Mad., 296 (P.C.).
(6) (1921) I.L.R., 44 Mad., 205.
(7) (1909) I.L.R., 32 Mad., 167.

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Sundaralingasami Kamaya Naik(1), it was made clear that the son of a legally married wife is a preferable heir to impartible property over the son of a sword wife or concubine. The decisions in *Trimbak* v. *Lakshman*(2), where it was observed that religious offices were naturally indivisible, and in *Sri Raman Lalji Maharaj* v. *Sri Gopal Lalji Maharaj*(3), where it was observed that, if there are no emoluments attached to an office of trustee, there was no reason to partition the property amongst junior members, were also cited.

Ramanathan Chetty v. *Murugappa Chetty*(4), where BHASHYAM AYYANGAR, J., observed that the usage and custom in respect of religious trusteeships which were hereditary in a family, was generally that the office could be divided by getting the duties discharged in rotation by each member of the family and that the exceptions to that rule would only be a few cases in which the hereditary office may be descendible only to a single heir, was a case of family partition among Chetties of Sivaganga. It was not alleged in that case that there had been any trace of impartibility existing in the family prior to partition. In appeal in *Ramanathan Chetty* v. *Murugappa Chetty*(5), the Judicial Committee confirmed the decree of this High Court which provided for each member of the family taking one turn of management in succession, the grounds of their Lordships' decision being that there was an unbroken usage evidencing a family arrangement in this particular family and that that arrangement should hold good until altered by the Court or superseded by a new scheme. In *Meenakshi Achi* v. *Somasundaram Pillai*(6), the CHIEF JUSTICE and SESHAGIRI AYYAR, J., observed that the course of decisions in

(1) (1894) I.L.R., 17 Mad., 422.
(2) (1896) I.L.R., 20 Bom., 495.
(3) (1897) I.L.R., 19 All., 428.
(4) (1904) I.L.R., 27 Mad., 192.
(5) (1906) I.L.R., 29 Mad., 283 (P.C.).
(6) (1921) I.L.R., 44 Mad., 205.

this Presidency, which had the approval of the Judicial Committee, was opposed to the proposition that the office of a trustee in a public institution was indivisible and regulated by the same rules as the succession to impartible estates. The suit related to certain *kattalais* attached to a temple in the Tanjore district, and the learned Judges held that a claim by the seniormost male member to manage alone among the heirs should be proved as a special custom. From the history of the case it appears that these *kattalais* were managed for some years by the Board of Revenue and that they restored the management and the enjoyment of the lands to two members of the family representing the senior and the junior branches. In such a case, the usage of the institution was obviously opposed to the principle of management by a sole trustee. In Mayne's Hindu Law, paragraph 439, it is stated that the devolution of the trust upon the death or default of each trustee depends upon the terms upon which it was created, or the usage of each particular institution where no express trust deed exists.

In 1863, when Government restored the management of these temples to Kamakshi Bai, it was thought that it was the universal custom of the country that the eldest male heir of a deceased trustee should succeed as trustee to the person from whom he inherited. See *Purappavanalingam Chetti* v. *Nullasivan Chetti*(1). And in the Sivaganga case, *Muttu Vaduganadha Tevar* v. *Dora Singha Tevar*(2), the Privy Council recognized the principle that in regranting an impartible zamindari and issuing a sanad, the Government could retain the quality of impartibility in respect of any of the property thereby restored. From the history of these institutions described

(1) (1863) I M.H.C.R., 415. (2) (1881) I.L.R., 3 Mad., 290 (P.C.).

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in Mr. VENKOBACHARIYAR'S judgment in Original Suit No. 3 of 1894, Exhibit A-197, it appears that the Raja of Tanjore founded several religious institutions and acquired lands and gave them as endowments to temples, that the pagodas were managed by Serfoji as hereditary trustee and that on his death his son Sivaji succeeded to all the rights and privileges of his father including the management of the pagodas. I am of opinion, therefore, that the founders of these institutions intended that their successors who occupied the Raj should continue to have the sole management of the temples and pagodas and the endowments attached to them. It follows therefore that to divide these properties among the many claimants to the estate of the late Sivaji would be a policy inconsistent with the intentions of the founder of the institution when he endowed the temples with lands. I am further of opinion that when Government restored these properties to Kamakshi Bai as "head of the family for the time being," they indicated their intention that they should continue to be managed by a sole trustee. If it were necessary for the first defendant to prove that sole trusteeship is an incident of this hereditary trust, I should be prepared to find it proved.

In this view, the Subordinate Judge was right in recognizing the first defendant as being the lawful trustee who should manage these properties for his lifetime in his capacity of head of the family, and I consider that the appeal should be dismissed so far as these properties are concerned.

Next as regards the purchases of immovable and movable properties made by the widows out of their savings, and as regards their jewels, it must be remembered that the Ranis were only receiving a small income from the Mokhasa estate and pensions of Rs. 800 a

month sanctioned by Government, and that from 1867 till the date of suit a Receiver was in charge of the estate. Thus the present is not an instance of a widow in possession of her husband's estate making acquisitions out of income, in which case the Privy Council declared in *Nabakishore Mandal* v. *Upendrakishore Mandal*(1), that the acquisitions would become accretions to the husband's estate unless it were shown that she dealt with it in such a manner that it would remain her own (vide also *Mussumat Bhagbutti Dace* v. *Chowdry Bholanath Thakoor*(2).

Whether the after-purchases form accretions to the *corpus* of a deceased husband's estate or *stridhanam* of the widow depends upon her intention, which has to be gathered in every case from her manner of her dealing with the property [vide *Isri Dutt Koer* v. *Hansbutti Koerain*(3), where the authorities are reviewed, and later cases in *Akkanna* v. *Venkayya*(4), and *Subramanian Chetti* v. *Arunachelam Chetti*(5), and *Babu Sheo Lochun Singh* v. *Babu Saheb Singh*(6)].

In every case it is a question of fact whether a widow has dealt with the income of her husband's property in such a manner as to make it an accretion to the *corpus* (vide *Rajah of Ramnad* v. *Sundara Pandiya-sami Tevar*(7).

As for presumptions, when it is shown that the *corpus* of the estate has been all along in the possession of a Receiver or of the Court of Wards, as was the case in *Saodamini Dasi* v. *The Administrator-General of Bengal* (8), *Rajah Parthasarathy Appa Rao* v. *Rajah Venkatadri Appa Rao*(9), and here, there is no room for presuming

(1) (1922) 42 M.L.J., 253 (P.C.).
(2) (1875) 2 I.A., 256 (P.C.).
(3) (1884) I.L.R., 10 Calc., 324 (P.C.).
(4) (1902) I.L.R., 25 Mad., 351.
(5) (1905) I.L.R., 28 Mad., 1.
(6) (1887) 14 I. A., 63.
(7) (1919) I.L.R., 42 Mad., 581 (P.C.).
(8) (1893) I.L.R., 20 Calc., 433 (P.C.).
(9) (1923) I.L.R., 46 Mad., 190.

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that the widow intended to make the investments of the funds received by her, part of her husband's estate, when she did not get her husband's estate into her possession.

As for item 3 in schedule D-1 which is an acquisition of Anusamba Bai Saheba who died in 1895, she wrote a letter A-186 to the Collector announcing her intention to create a trust in favour of the adopted son's son and received a reply A-187 acknowledging her letter.

As regards jewels of Jijamba Bai, it is stated in the written statement of defendants 1 and 2 that they were purchased out of the savings from her own income, and there being no evidence *contra*, the Subordinate Judge was right in treating them as her absolute property.

Lastly, assuming that these properties were the self-acquisitions of the widows, the appellants claim to be *sapindas* and to have a right to succeed to the *stridhanam* of widows who were married in an approved form, on the ground that it goes on their deaths without issue to the heirs of their husband.

In *Subramania Ayyar* v. *Rathnavelu Chetty*(1) it was held by a Full Bench that the illegitimate son of a Sudra ranked as a *sapinda* of his putative father, and that the latter was entitled to succeed to his property if he died without issue.

But the Full Bench recognized the fact that an illegitimate son had never been regarded by any of the Courts in India as an heir to his putative father's collateral relations, and that the authorities against such a proposition were very strong (see page 72). I am not satisfied that there are sufficient grounds to reconsider that statement of the law as it now stands. The reason for giving an illegitimate son a half share of what a

(1) (1918) I.L.R., 41 Mad., 44 (F.B.).

legitimate son of a Sudra gets is morally justifiable on the ground that he has a legal right to be maintained by his putative father, but there is no legal obligation to maintain illegitimate children of collaterals.

The result is that the appeal of the Mangala Vilas parties in this suit is dismissed.

The costs of appellants and respondents 1 and 2, so far as the appeal relates to the devastanam estate, will be payable out of the income of the devastanam estate, as it was necessary to have the question of devolution of the trust finally settled; but the appeal, so far as accretions and accumulations are concerned, is dismissed with costs of respondents 1 and 2.

The memorandum of objections is also dismissed with costs of respondent 1.

KUMARASWAMI SASTRI, J.—This appeal relates to the devastanam known as the fort or palace devasthanam and the endowments founded by the Rajas of Tanjore and to the share of the plaintiffs in the immovable properties described in the plaint, which were purchased and enjoyed by the widows of Sivaji Maharaja who was the last Raja of Tanjore. Claim is also made to the jewels and movables left by the Ranis.

The plaintiffs and the 3rd and 4th defendants represent the illegitimate branch and the 1st and 2nd defendants are the grandsons of the late Sivaji Maharaja, the last ruler of Tanjore, being the sons of Serfoji who was adopted by Kamakshi Bai Saheba. The other defendants are alienees from one or other of the Ranis.

The plaintiffs sued for the trusteeship and possession of the devastanam properties and for the recovery of possession of the *stridhanam* properties left by the widows on the ground that they and the 3rd and 4th defendants are the sons of the sword wives of the late Raja and for a declaration that the 1st and 2nd

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defendants have no rights as the adoption of their father is invalid, that the alienations by the widows in favour of the other defendants are invalid beyond the life-time of the widows and that the plaintiffs as heirs are entitled to succeed. The contesting defendants denied that the plaintiffs and the 3rd and 4th defendants have any right as the sons of sword wives to the devastanam and other properties and stated that the alienations by the widows could not be questioned or set aside by the plaintiffs. The Subordinate Judge dismissed the plaintiffs' suit. As regards the devastanam properties he held that the grant by the Government was to a single individual or sole trustee and there can be no claim for participation. It would therefore pass to the head of the family for the time being and that the 1st defendant as the senior representative was entitled to be the sole trustee. As regards the other properties he held that the properties claimed were *stridhanam* properties of the Ranis and not accretions to the private estate of the Raja and that the plaintiffs and the 3rd and 4th defendants were not the heirs to the *stridhanam* properties. He dismissed the plaintiffs' suit and hence the appeal.

The 2nd defendant filed a memorandum of objections against that portion of the decree which declared that the 1st defendant was entitled to be the sole trustee. His case is that he is entitled along with the 1st defendant to be the trustee of the devastanam properties.

We have held in the appeals which relate to the private properties of Sivaji Maharaja that the plaintiffs and the 3rd and 4th defendants formed the illegitimate branch, that the Tanjore Rajas were Sudras by caste and that the illegitimate sons and their branch of the family who are known as the Mangala Vilas branch were only entitled to the shares which the illegitimate sons of a Sudra would take in their father's properties. We

also held that the adoption of the father of the 1st and 2nd defendants was valid and that the 1st and 2nd defendants as the adopted son's sons of the late Raja were entitled to inherit his properties and we ordered a partition of the private properties between the legitimate and the illegitimate branches. In disposing of this appeal it is clear that the claim of the plaintiffs in the plaint must be viewed from the standpoint of the above findings, and they can only get such rights as the law confers on the illegitimate sons of a Sudra.

The questions which arise for determination in this appeal are—

(1) Whether under the terms of the grant by the Government the trusteeship of the devastanam properties vests in all the heirs of Sivaji Maharaja, the last Ruler of Tanjore, like ordinary partible property and has to be managed by turns by each of such branches or whether it vests in the senior male member of the eldest branch of the family for the time being?

(2) Whether the properties acquired by the widows of the late Sivaji Maharaja were accretions to the estate and consequently divisible between such persons as would be entitled to a partition of the estate or whether they were the *stridhanam* properties of the widows who made the acquisitions and are descendible to the *stridhanam* heirs? and

(3) if the properties are *stridhanam* properties, whether the plaintiffs and the 3rd and 4th defendants would be entitled to a share?

As regards the trusteeship of the devastanam and other trust properties, I am of opinion that the Subordinate Judge is right. The devastanam and other endowments were taken charge of by the Government along with the Raj and the private estate of the last Raja on his death. We have in our judgment in the appeals from the main case traced the course of events from the confiscation of the Raj to the death of his last Rani. Kamakshi Bai Saheba, the senior widow and Rani, got possession of the private properties

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of the Raja under the terms of the grant (Exhibit A-46), dated the 21st August 1862. She petitioned the Government for the restoration to her of the devastanam and other trust properties, and the Government by their order, dated the 19th of March 1863, put her in possession of such properties. From 1863 to 1892 Kamakshi Bai Saheba was managing the properties as the sole trustee, and although a Receiver was appointed in 1865 in the litigation between Kamakshi Bai Saheba and her co-widows, the Receiver did not take possession of the devastanam properties and Kamakshi Bai Saheba was managing them as the sole trustee. On the death of Kamakshi Bai Saheba the Government took possession of the trust properties, and Umamba Bai Saheba, who was then the senior Rani, filed Original Suit No. 3 of 1894 against the Secretary of State and the members of the Devastanam Committees of Tanjore and Kumbakonam and the other surviving Ranis for a declaration of her right to succeed to the office and for possession of the properties. The Subordinate Judge in an exhaustive judgment decreed in favour of the plaintiff and the judgment has been filed as Exhibit A-197 in the suit. He held that on a construction of the Government grant of 1863 the restoration of the management of the pagoda to Kamakshi Bai Saheba carried with it heritable right and that the right was transmissible to her heirs, the Government having no right to resume or interfere with the management of the temple after the death of Kamakshi Bai Saheba. He was also of opinion that succession to the management should be traced in the same way as succession to the impartible Raj; that on the death of Kamakshi Bai Saheba the right did not vest jointly in the surviving widows and that the plaintiff as the senior widow was entitled to succeed. Against this judgment there was an appeal filed to the

High Court which is reported in *Kalianasundaram Ayyar* v. *Umamba Bayi Saheba*(1). The decision of the Subordinate Judge was confirmed and it was held by SHEPHARD and DAVIES, JJ., that the estate taken by Kamakshi Bai Saheba under the grant was in the nature of self-acquired property in the Rani's hands in the sense that her rights were derived from Government and had no relation back to inheritance on the death of the Raja and that as she asked that the management should be put in her hands in the capacity as the head of the family for the time being, the inference was that the intention was to grant a widow's estate, that is, to put Kamakshi Bai Saheba in the position which she would have enjoyed had there been no confiscation on the death of her husband the Raja. This decision does not, however, conclude the question as to whether on the death of the last of the Ranis the trusteeship and management was to be in the senior member of the family or whether it was to be treated as a right which should be enjoyed by all the members who were to divide the private properties of the Raja. So far as the terms of the grant go, the Government order putting Kamakshi Bai Saheba in management of the devastanam properties differs in several respects from the grant of 1862, and the order of the 19th of March 1863 simply says that it is desirable that the connection of Government with the pagodas should cease and they will accordingly be made over to Her Highness Kamakshi Bai Saheba.

In dealing with the question of management of the trust property, I think the first question to be considered is the usage as regards the management prior to the death of Sivaji Maharaja, the last ruler of Tanjore. There can be little doubt, and it is not seriously

(1) (1897) I.L.R., 20 Mad., 421.

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contended before us by the appellants, that this temple and the charities which were founded by the successive Rajas of Tanjore were in the possession and management of the Raja for the time being and that till the death of Sivaji the office was always held by a single individual. When the Raj was seized by the Government as an act of State, the pagodas and the devasthanams were also taken possession of and managed by the Government; but they were not desirous of taking upon themselves the responsibility of managing the temple and the devastanam properties. The Government at one time wanted that the devastanam should be made over to Sakharam Saheb, the son-in-law of Sivaji Maharaja, as sole trustee. Sakharam Saheb had married the elder daughter of the late Maharaja and on her death he married the younger daughter. As, however, there were disputes between Sakharam Saheb on the one side and Kamakshi Bai Saheba on the other, this proposal was not given effect to. In 1860 there was an idea of transferring the management to Avu Bai Saheba, the late Raja's mother, but she was not willing to assume management. After Kamakshi Bai Saheba got possession of the private properties of the Raja, she claimed the restoration of the devastanams and the endowments on the ground that they were vested in her husband and that she was the then head of the family. Her request was supported by the Government Agent and the outcome of it was the order of 1863 transferring the management to her. From 1863 till her death in 1892 she was the sole trustee and it was till then nobody's contention that the office of trustee could partake of the nature of private property and that each of the surviving Ranis was to have the management by turns and although the Receiver took possession of all the private properties, the trust

properties were left in the possession and management of Kamakshi Bai Saheba. On her death the next senior Rani was, as the result of the suit which I have already referred to, put in possession and management and on the death of each senior Rani the junior succeeded. I am unable to find anything either in the Government order or in the surrounding circumstances which changed the usage prevailing as regards these institutions, namely, the management by a single individual who was the head of the family for the time being and which rendered it subject to all the incidents of partible property.

In cases of religious institutions the main question to be considered is what was the usage of the institutions; and where from the date of the foundation of these charities up to the date of the present suit the trust was managed by a single individual who was the head of the family not in possession of any partible property, I think it would require very strong evidence to show that there is anything in the grant by the Government of 1863 which introduced a new course of devolution and would make it subject to all the incidents of a trusteeship held by a member of a joint and undivided family. As I said before, there is nothing in the grant of 1863 which either expressly or by implication changed the usage of these institutions. They formed part of the Tanjore Raj and the Raja for the time being was the trustee. As regards the private properties which were restored by the order of 1862 there are express words which make the grant subject to the ordinary Hindu Law applicable to partible properties and the properties were to descend according to Hindu Law. There are no such words in the grant of the devastanam properties to Kamakshi Bai Saheba. The devastanams having been part of the Tanjore Raj and the trusteeship having devolved on

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the Raja for the time being, the right of management till the confiscation by the East India Company must be treated as impartible property and the office as one which was held only by a single individual.

It was of course open to the Government to destroy that character and to grant the office on such terms as to succession as it thought fit. The confiscation having destroyed all antecedent rights there can be no question of any vested rights as to succession to the office. I am unable to infer from the mere fact that Kamakshi Bai Saheba applied for possession of the devastanam properties as senior widow and was put in possession, the course of succession to the office changed. Even if there was no confiscation, the office vested in the senior member of the Raja's family. In cases of confiscation and regrant of property which is impartible, the law is that in the absence of anything in the regrant, the property which is regranted is subject to the old incident of impartibility. In *Baboo Beer Pertab Sahee* v. *Maharajah Rajender Pertab Sahee*(1), the zamindari of Hunsapore which was an impartible Raj and which descended to the eldest male heir according to the rule of primogeniture was confiscated by the East India Company and was in the possession of the Government for some years. It was then granted to the younger member of the family of the deposed Raja. It was held that, although the zamindari was to be treated as the self-acquired property of the grantee, the grant being from the Ruling Power, in the absence of evidence of the intention of the grantors to the contrary, carried the incidents of the family tenure as a Raj. In *Muttu Vaduganadha Tevar* v. *Dora Singha Tevar*(2), the Sivaganga Zamindari which was originally impartible was

(1) (1867) 12 M.I.A., 1.

(2) (1881) I.L.R., 3 Mad., 290 (P.C.).

confiscated by the Government and regranted and it was held by their Lordships of the Privy Council that the regrant did not make the estate partible. A similar view was also taken by their Lordships in *Ram Nundun Singh* v. *Janki Koer*(1), where it was held that the confiscation and regrant of an impartible Raj to the various members of the family did not make the property regranted partible. The mere fact that there was a regrant would not, in my opinion, destroy the course of devolution followed till that date.

Great reliance was placed by Mr. Krishnaswami Ayyar for the appellants on the decision reported in *Ramanathan Chetty* v. *Murugappa Chetty*(2), which was affirmed by their Lordships of the Privy Council in *Ramanathan Chetti* v. *Murugappa Chetti*(3). In that case the question was as to the validity of an arrangement come to by the members of an undivided family regarding the management by turns of a devastanam which was hereditary in the family. The question turned upon the usage as regards the management, and BENSON and BHASHYAM AYYANGAR, JJ., in the course of their judgment, observe :

"Except in the few cases in which the hereditary office may be descendible only to a single heir, the usage and custom generally is that along with other properties the office also is divided in the sense that the office is agreed to be held and the duties thereof discharged in rotation by each member or branch of the family, the duration of their turns being in proportion to their shares in the family property."

Their Lordships of the Privy Council rest their decision on the usage as regards the trusteeship. Lord MACNAGHTEN in delivering judgment of their Lordships observes as follows :—

"In their Lordships' opinion the case is a very simple one. They think the unbroken usage for a period of nineteen years

(1) (1902) I.L.R., 29 Calc., 828 (P.C.). (2) (1904) I.L.R., 27 Mad., 192.
(3) (1906) I.L.R., 29 Mad., 283 (P.C.).

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is as against the appellant conclusive evidence of a family arrangement to which the Court is bound to give effect."

It is on this sole ground that they held that there was nothing improper in the arrangement.

There can be little doubt that the Hindu text-writers treated a trusteeship or a right to the management of religious or charitable endowments as impartible property. In *Mancharam* v. *Pranshankar*(1), it was pointed out that the management of religious endowments is indivisible though modern custom has sanctioned a departure by allowing the parties entitled to officiate by turns. This decision was followed in *Trimbak* v. *Lakshman*(2). The inconvenience of such a custom was also pointed out. CANDY and RANADE, JJ., observed :

"It is clear that if the present claim of the appellant were recognized, each of the sons of the parties—and they have many—might claim a share not only in the family share but in the devasthan share and office also, and this process might go on with each generation, frittering away the income, and making the service wholly ineffective. The lower Court appears to have assumed, without any such evidence as is suggested in *Mohunt Rumun Dass* v. *Mohunt Ashbul Dass* (3), that the office is partible with the income. The practice of many generations of the parties must be considered in settling the question of impartibility, and that practice is in this case against partition with the one single exception of what took place in 1838."

This case was cited with approval by their Lordships of the Privy Council in *Sethuramaswamiar* v. *Meruswamiar*(4).

Where impartibility and management by a single individual who was the eldest member of the eldest branch of the family has been the rule from the foundation of the trust till the date of the present suit, I find nothing either in *Ramanathan Chetty* v. *Murugappa*

(1) (1882) I.L.R., 6 Bom., 298.
(2) (1896) I.L.R., 20 Bom., 495.
(3) (1864) 1 W.R. 160.
(4) (1918) I.L.R., 41 Mad., 296 (P.C.).

Chetty(1), or *Ramanathan Chetty* v. *Murugappa Chetty*(2), which compels us to hold that the office should be treated as partible property and that on partition of the other properties of the family, this office should be held by turns. I may also point out that, having regard to the numerous descendants of the late Raja who would, if the office is held to be partible, be entitled to turns of management, and having regard also to the future growth of the family, it would be against the interests of the trust to give the numerous parties turns of management and I am not prepared to do so unless compelled either by the established usage of the institution or the terms of the regrant by the Government. I think the proper rule in such cases is to see whether there is any deed constituting the trust and regulating the course of devolution of the trust. If there is such a document, then the devolution will, of course, be regulated by the terms of the document constituting the trust. If there is no such document, the Court has to see what was the usage of the institution and to give effect to such usage. Where there is no uniform course of conduct, the interests of the institution should be the first consideration. If the management can, without detriment to the trust, be held by turns, it is open to the Court to decree management by turns. I have not been referred to any *texts* which state that the office of dharmakartha or trustee of a religious or charitable endowment is to be treated as joint property on partition and that turns have to be given to each member of the undivided family who gets a share in the partition irrespective of the interests of the charities. I do not find anything in the decision of their Lordships of the Privy Council in *Ramanathan Chetty* v. *Murugappa*

(1) (1904) I.L.R., 27 Mad., 192. (2) (1906) I.L.R., 29 Mad., 283 (P.C.)

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Chetty (1), to warrant the rule that even in the case of public charities and trusts the claims of the dividing co-parceners should override the interests of the institution and the observations of their Lordships in *Sethuramaswamiar* v. *Meruswamiar* (2), rather suggest that the rule laid down as to turns of management on partition applies only to private charities.

I find it difficult to accept the argument of Mr. Venkata Achariyar for the second defendant that the management should be confined to the first and second defendants by turns to the exclusion of the illegitimate sons. Either the office is impartible and descends on the eldest member of the senior line or it should be treated as partible and turns given to all those who are entitled to share in the family properties. There is no principle on which the office can be confined to the first and second defendants to the exclusion of the Mangala Vilas branch.

As regards the properties left by the last Rani in respect of which partition is claimed, I do not think the plaintiffs are entitled to any share. I do not think that the properties acquired by the Ranis can be said to be accretions to their husband's estate and to devolve upon the persons who would be entitled as reversioners to their property. From the year 1866 up till the date of this suit there was a Receiver in charge of the estate and none of the widows were in possession or management. I have in my judgment in the suit relating to the private properties of the late Raja given my reasons for holding that the estate was not strictly a Hindu widow's estate but that the grant by the Government was on terms which were analogous to it. It was held in *Jijoyiamba Bayi Saiba* v. *Kamakshi Bayi Saiba*, (3)

(1) (1906) I.L.R., 29 Mad., 283 (P.C.). (2) (1918) I.L.R., 41 Mad., 296 (P.C.).
(3) (1868) 3 M.H.C.R., 424.

that whatever rights the widows would have enjoyed had they succeeded to the estate of the late Raja under Hindu Law were destroyed by the grant of 1862 which was to be regarded as the root of title. Each Rani got about Rs. 9,500 a year as pension from the Government. The widows had their own properties and had also jewels and there is nothing to show that the properties now claimed were acquired with the income of the estate left by their husband and not with the savings from their pensions or dealings with their own *stridhanam* properties. Before the plaintiffs can claim the properties as accretions to the husband's estate, they must show that the properties were purchased out of the income of the estate or out of the savings therefrom. There is no evidence that the acquisitions by the Ranis were treated as part of their husband's estate or mixed up with it, but on the contrary we find that the Ranis were anxious to dispose of the properties which they had acquired. It is difficult to see how there can be said to be any accretions to the estate left by their husband.

So far as this Presidency is concerned, the authorities are to the effect that there is no presumption that property acquired by a Hindu widow out of funds which were at her absolute disposal would form part of her husband's estate. I have dealt with this question in *Rajah Parthasarathy Appa Rao* v. *Rajah Venkatadri Appa Rao* (1). In *Rajah of Ramnad* v. *Sundara Pandiyasami Tevar*(2), their Lordships of the Privy Council observe :

"Their Lordships think the answer to this is that a widow may so deal with the income of her husband's estate as to make it an accretion to the corpus. It may be that the presumption is the other way. A case has been cited to their Lordships which seems so to say. But at the outside it is a presumption and it is a question of fact to be determined, if there is any dispute, whether a widow has or has not so dealt with her property."

(1) (1923) I.L.R., 46 Mad., 190 at p. 220. (2) (1919) I.L.R., 42 Mad., 581 (P.C.).

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The case referred to seems to be *Akkanna* v. *Venkayya*(1), which was referred to in the course of the argument by Mr. De Gruyther.

It is argued by Mr. Krishnaswami Ayyar that the decision of the Privy Council in *Nabakishore Mandal* v. *Upendrakishore Mandal*(2), has settled the question which was left in doubt in *Rajah of Ramnad* v. *Sundara Pandyasami Tevar*(3). There is an observation of their Lordships at page 256 to the following effect:—

"Now there can, their Lordships think, be no doubt that whatever stridhan she possessed was due to the accumulated savings from the income of the property which she received from her husband's estate, and though it is true that when that property had been received it would be possible for her so to deal with it that it would remain her own, yet it must be traced and shown to have been so dealt with, and in this case there is no sufficient evidence of this having been done."

It is argued that the effect of this observation is that the onus is on the other side to show that she did something which would indicate an intention of treating the accretions as her own and not as part of her husband's estate. The previous decisions of the Privy Council are not referred to by their Lordships and I do not think this case can be said to overrule all the previous decisions of their Lordships on the subject.

I am of opinion that the decision in *Saodamini Dasi* v. *The Administrator-General of Bengal* (4), is clear authority for the view that where a widow is not in possession of her husband's estate, there can be no question of any purchase made by her being an accretion to her husband's estate. Their Lordships of the Privy Council observe: "The appellant's counsel contended that the savings of a Hindu widow must be presumed to have been made for the benefit of her husband's estate.

(1) (1902) I.L.R., 25 Mad., 351. (2) (1922) 42 M.L.J., 253 (P.C.).
(3) (1919) I.L.R., 42 Mad., 581 (P.C.). (4) (1893) I.L.R., 20 Calc., 433 (P.C.).

Without examining the precise result of the decisions, it is sufficient to say that in this case there is no room for any such presumption, for the corpus of the estate never came to the widow, but was taken by Shamcharan Mullick under the will, and the income to which the widow succeeded was separated from it, and became and was dealt with as an entirely separate fund."

I think the result of the authorities may be summed up as follows:—A Hindu widow has an absolute right of disposal over the income of the property which she inherits from her husband. She can either spend the same or accumulate it for her own benefit. In cases where she purchases properties or invests her savings and indicates by her conduct an intention that the properties purchased out of her savings should form part of her husband's estate, such savings should follow the same rules as govern the devolution of her husband's estate and should be treated as accretions to the estate. Where she does not do so, she has absolute powers of disposal over such property and can sell or give the same to anybody she pleases without any right of the reversioners to question her alienations. Where the question is one of intention to be deduced or inferred from her conduct, the presumption is she intends to keep the property for her own absolute benefit and to have absolute powers of disposal over it. Where, however, a widow is not in possession of her husband's estate, there is no presumption that any of the properties which she gets are to be treated as accretions to her husband's estate nor can an intention be inferred that she wants to treat them as part of her husband's estate. On her death such properties would follow the same course of succession as her *stridhanam* properties.

The claim in this appeal relates to the properties left by (1) Umamba Bai Saheba who died on the 4th of

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July 1900 possessed of items 1 and 2 in schedule D-1 to the plaint, (2) Anusamba Bai Saheba who died on the 30th September 1895 leaving item 3 in schedule D-1 and (3) Jijamba Bai Saheba, the last surviving widow. It is alleged that the properties in schedule E to the plaint were left by Jijamba Bai Saheba.

As regards item 3 in schedule D-1 which is the acquisition of Anusamba Bai Saheba, the evidence is that on her death Serfoji got possession of the property and after him his son, the 1st defendant, got possession. She also wrote to the Government Agent that she wanted to give the property to the adopted son and she made a settlement. The evidence, oral and documentary, shows that on her death in 1895 Serfoji got into possession in accordance with the settlement made by Anusamba Bai Saheba. The claim to item 3 by the present plaintiffs is therefore clearly barred by limitation, even assuming that the plaintiffs are her heirs.

As regards the properties of Jijamba Bai Saheba, the last Rani, she has left a will disposing of her properties and it follows that the plaintiffs can have no claim, she, in my opinion, having had full disposing power over the savings from her husband's estate, her pension, and her own *stridhanam* jewels.

As regards properties left by Umamba Bai Saheba, she died in 1900 and Jijamba Bai Saheba took possession of her properties. She claimed to be the heir of Umamba Bai Saheba and it does not appear that she claimed anything more than a co-widow's right to succeed. It is now settled law that there is no distinction as to the nature of the estate taken between property inherited by a woman from a male and property inherited from a female. In both the cases she takes not an absolute estate but only a qualified one. I need only refer to *Venkatarama Krishna Rau* v. *Bhujanga*

Rau (1), *Virasangappa Shetti* v. *Rudrappa Shetti* (2), and to the decision of their Lordships of the Privy Council in *Sheo Shankar Lal* v. *Debi Sahai*(3), and *Sheo Partab Bahadur Singh* v. *The Allahabad Bank*(4). This being so, it follows from the decision of their Lordships of the Privy Council in *Lajwanti* v. *Safa Chand*(5), that a suit which is filed within twelve years of Jijamba Bai Saheba's death would not be barred. As Umamba Bai Saheba did not make any disposition of the properties, the question is who are the heirs to the properties left by her at the time of her death which were in the possession of her co-widow Jijamba Bai Saheba. The plaintiffs belonging to the illegitimate branch and being the descendants of the last Raja in existence, the question is whether under Hindu Law they can succeed to the estate of the Ranis, and this turns on the question whether in the case of Sudras the illegitimate sons have got any right to collateral succession.

It is argued by Mr. Krishnaswami Ayyar that, in the absence of son, daughter and daughter's son, the *stridhanam* property goes to the husband and his heirs, and that if you come to the point where there are no such heirs as abovenamed, you have to make no difference between the husband's property and the *stridhanam* property of the wife and all her husband's heirs will be entitled to succeed. He therefore argues that, even if the property left by Umamba Bai Saheba who died issueless was her *stridhanam* property, succession must be traced as if it was the property of her husband, and, as the illegitimate sons would succeed along with the legitimate sons to the properties of their father, they would also succeed to the *stridhanam* properties in the

(1) (1896) I.L.R., 19 Mad., 107. (2) (1896) I.L.R., 19 Mad., 110.
(3) (1903) I.L.R., 25 All., 468 (P.C.). (4) (1903) I.L.R., 25 All., 476 (P.C.).
(5) (1924) 51 I.A., 171.

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same proportion. Reference has been made to the decision of their Lordships of the Privy Council in *Bai Kesserbai* v. *Hunsraj Morarji*(1), where their Lordships refer to the Mitakshara, the Mayukha and the texts of Brihaspathi as regards succession to *stridhanam* properties and hold that in the case of approved forms of marriage the heirs enumerated by Brihaspathi who are blood relations of the husband would succeed to the woman's property. Reference is also made to *Nanja Pillai* v. *Sivabagyathachi*(2), where it was held that the *stridhanam* property of a woman married according to the approved form who has left no issue will devolve on her husband and on failure of the husband the property will go to his *sapindas* in the order laid down in the Mitakshara with reference to the succession to the property of a male, and to *Kanakammal* v. *Ananthamathi Ammal*(3), where a similar rule has been laid down. Were the matter *res integra*, I am disposed to hold that in the case of Sudras an illegitimate son is in the same position as a legitimate son except that he gets a lesser share. The fact that an illegitimate son gets a lesser share would not by itself create a bar to collateral succession any more than the fact that an adopted son who exists along with a natural son born subsequently and who gets a lesser share would be barred. But there is a long catena of cases beginning with *Nissar Murtojah* v. *Kowar Dhuncunt Roy*(4), which decide that an illegitimate son has no right to collateral succession. I have in *Subramania Ayyar* v. *Rathnavelu Chetty*(5), referred to all the authorities and dealt fully with the illegitimate son's rights and the position of an illegitimate son wit-

(1) (1906) I.L.R., 30 Bom., 431 (P.C.).
(2) (1913) I. L.R., 36 Mad., 116. (3) (1914) I.L.R., 37 Mad., 293.
(4) (1863) Marshall's Reports, 609. (5) (1918) I.L.R., 41 Mad., 44 (F.B.).

regard to collateral succession. The right was negatived in *Krishnayyan* v. *Muttusami*(1), *Ranoji* v. *Kandoji*(2), *Parvathi* v. *Thirumaloi*(3), *Shome Shankar Rajendra Varere* v. *Rajesar Swami Jangam*(4), *Ramalinga Muppan* v. *Pavadai Goundan*(5), *Meenakshi* v. *Muniandi Panikkan*(6), *Dharma Lakshman* v. *Sakharam Ramjirao*(7), and *Zipru* v. *Bomtya*(8). The plaintiffs are not entitled to Umamba Bai Saheba's property as heirs under Hindu Law.

The appeal fails and is dismissed. The memorandum of objections is also dismissed. I agree to the order as to costs proposed by my learned brother.

This appeal having been posted to be spoken to on the question of costs allowed to the first respondent on the memorandum of objections filed by the second respondent, the Court made the following :—

ORDER.

In modification of our original order we direct that the first respondent do get his costs of the memorandum of objections out of the devastanam estate and the second respondent will bear his own costs in his memorandum of objections.

K.R.

(1) (1884) I.L.R., 7 Mad., 407.
(2) (1885) I.L.R., 8 Mad., 557.
(3) (1887) I.L.R., 10 Mad., 334.
(4) (1899) I.L.R., 21 All., 98.
(5) (1902) I.L.R., 25 Mad., 519.
(6) (1915) I.L.R., 38 Mad., 1144.
(7) (1920) I.L.R., 44 Bom., 185.
(8) (1922) I.L.R., 46 Bom., 424.